

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0024
Gross Retail and Use Tax
For the Tax Periods 2002 through 2004

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ISSUE

I. Publication – Gross Retail and Use Tax.

Authority: IC 6-2.5-5-17; Carroll County Rural Electric Membership Corp. v. Ind. Dept. of Revenue, No. 49T10-0003-TA-32, 2005 Ind. Tax LEXIS 80 (Ind. Tax Ct. 2005); 45 IAC 2.2-5-26.

Taxpayer argues that the publication which it circulates monthly to its customers qualifies as a “newspaper” and is not subject to Indiana’s gross retail tax.

STATEMENT OF FACT

Taxpayer is a not-for-profit rural electric cooperative organized to provide electric power to its member-owners. The Department of Revenue (Department) conducted an audit review of taxpayer’s business records. The audit concluded that taxpayer owed additional sales and use tax. Taxpayer protested a portion of the assessment, the protest was assigned to a hearing officer, and this Letter of Findings results.

DISCUSSION

I. Publication – Gross Retail and Use Tax.

During the tax periods at issue, taxpayer purchased copies of a publication and circulated the copies to its member-owners. In the belief that the copies were exempt “newspapers,” taxpayer did not pay sales tax when it bought the copies. On the ground that the publication was not a “newspaper,” the audit disagreed and assessed taxpayer use tax. The audit did so based upon 45 IAC 2.2-5-26 which states in part:

In general, sales of all publications irrespective of format are taxable. The exemption by this rule . . . is limited to sales of newspapers For purposes of the state gross retail tax, the term “newspaper” means only those publications which are:

- (1) commonly understood to be newspapers;
- (2) published for the dissemination of news of importance and of current interest to the general public, general news of the day, and information of current events;

- (3) circulated among the general public;
- (4) published at stated short intervals;
- (5) entered or are qualified to be admitted and entered as second class mail at a post office in the county where published. *See* IC 6-2.5-5-17.

The issue raised by taxpayer was addressed by the Indiana Tax Court in Carroll County Rural Electric Membership Corp. v. Ind. Dept. of Revenue, No. 49T10-0003-TA-32, 2005 Ind. Tax LEXIS 80 (Ind. Tax Ct. 2005). In that case, the court found that the petitioner's publication – circulated to the petitioner's own member-owners – was “a newspaper because it is: (1) commonly understood to be a newspaper; (2) circulated among the general public; and (3) published at stated short intervals.” *Id.* at *15. The court concluded that petitioner's purchase of its publication was “exempt from the sales tax pursuant to Indiana Code § 6-2.5-5-17.” *Id.*

Taxpayer's protest is squarely on point with the facts and law set out in Carroll County and is nearly identical with that case in all material ways. Taxpayer's publication is the same publication purchased by the petitioner in Carroll County and is circulated to taxpayer's member-owners in the same manner as the publication considered by the court in that case.

The Department will, of course, defer to the Tax Court in its interpretation of what constitutes an exempt “newspaper” pursuant to IC 6-2.5-5-17. Taxpayer's publication is entitled to the same exempt status as that of the publication described in Carroll County.

FINDING

Taxpayer's protest is sustained.